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IN THE

Supreme Court of the United States

DANIEL BENITEZ,

Petitioner,

v.

JOHN MATA, Interim Field Office Director, Miami Office, Bureau of Immigration and Customs Enforcement,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR *AMICI CURIAE* LEGAL AND SERVICE ORGANIZATIONS IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE

Amici are organizations that offer various legal and social services to immigrants who arrive at our borders. *Amici* include:[1]

The **Asian American Legal Defense and Education Fund (AALDEF)**, founded in 1974, is a non-profit organization based in New York City. AALDEF defends the civil rights of Asian Americans nationwide through litigation, legal advocacy and dissemination of public information. AALDEF has represented and assisted many Asian Americans on immigration matters. Every American, other than Native Americans, is an immigrant; the treatment of the Mariel Cubans affects all Americans.

The **Capital Area Immigrants' Rights Coalition (CAIR Coalition)** provides services to the immigrant advocacy community in the greater Washington, D.C. area. CAIR Coalition brings together community groups, *pro bono* attorneys, volunteers and immigrants to work for a fair and humane immigration policy. CAIR Coalition monthly visits approximately 500 immigrants detained by the Department of Homeland Security.

The **Catholic Legal Immigration Network, Inc. (CLINIC)** represents one expression of the Catholic Church's commitment to full membership of migrants in their chosen society. CLINIC supports 155 community-based legal agencies serving low-income immigrants and newcomers. CLINIC and its member agencies serve the most vulnerable migrants, such as refugees, asylum seekers, detainees, families in need of reunification, laborers abused in the workplace, victims of domestic violence and survivors of human trafficking. CLINIC operates the largest *pro bono* detention representation project in the country representing DHS detainees in eight sites. It also

1. Letters of consent to the filing of this brief have been lodged with the Clerk of Court pursuant to Rule 37.3. Pursuant to Rule 37.6, counsel for *Amici* states that no counsel for a party authored this brief in whole or in part and no person, other than *Amici* or their counsel, made a monetary contribution to the preparation or submission of this brief.

runs the nation's largest *pro bono* immigration appeals project which focuses on primarily representing people detained by DHS. For the last seven years, CLINIC has administered a special program that provides legal support and representation to indefinitely detained immigrants, including the "Mariel" Cubans. CLINIC has extensive experience in representing people subject to DHS' post order custody review process.

The **Center for Constitutional Rights (CCR)** is a national non-profit legal, educational and advocacy organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and international law. Founded in 1966 during the Civil Rights Movement, CCR has a long history of litigating cases on behalf of non-citizens seeking to assure them of due process.

The **Coalition for the Human Rights of Immigrants (CHRI)** is an all-volunteer organization that supports the rights of immigrants through grassroots education and action. A large part of CHRI's recent work has concerned immigrant detention. CHRI has worked closely with detainees, their families, and other advocates to bring about change in the policy of indefinitely detaining non-residents for whom deportation is impossible or unforeseeable.

The **Florence Immigrant and Refugee Rights Project** is a non-profit organization that provides free legal assistance to men, women and children who are detained by the Bureau of Immigration and Customs Enforcement in Arizona. The Florence Project's nationally commended model for providing legal services includes information and orientation for all those detained and targeted follow-up services, including representation, *pro bono* referral and intensive *pro se* case assistance, to ensure that all detained individuals receive at least a minimum level of legal services as they go through removal proceedings. Founded in 1989, the Project currently serves the 1,900 immigrants detained on any given day in Arizona.

The **Hebrew Immigrant Aid Society (HIAS)** is America's oldest international migration and refugee resettlement agency.

HIAS is dedicated to assisting persecuted people worldwide and delivering them to countries of safe haven. In its 120 years of existence, HIAS has rescued more than 4.5 million people. HIAS oversees the resettlement of refugees in the United States through a network of Jewish communal agencies. HIAS also provides direct immigration legal services in the New York metropolitan area to detained asylum seekers and immigrants. HIAS is concerned that indefinite detention of inadmissible aliens will adversely affect asylees, refugees, asylum seekers, and parolees.

Immigration and Refugee Services of America (IRSA) is a non-profit, nongovernmental organization that has served refugees and immigrants since 1911. The U.S. Committee for Refugees (USCR) is a public information and advocacy program of IRSA. Since 1958, USCR has defended the rights of refugees, asylum seekers, and internally displaced persons worldwide.

The **Lawyers' Committee for Civil Rights Under Law of Texas (Texas Lawyers' Committee)** is part of a national network of non-partisan, non-profit offices founded in 1963 at the request of President John F. Kennedy to provide legal services to victims of discrimination. The Texas Lawyers' Committee, founded in 1991, is committed to attaining and preserving civil rights for immigrants and refugees by engaging in impact litigation and advocacy.

Minnesota Advocates for Human Rights conducts a broad range of innovative programs to promote human rights, including investigative fact finding, direct legal representation, education and training, and publication. Minnesota Advocates has produced more than 50 reports documenting human rights practices in more than 20 countries; educated more than 10,000 students and community members on human rights issues; and provided legal representation and assistance to more than 3,000 disadvantaged individuals and families. Minnesota Advocates is the recipient of the 1991 AILA Human Rights Award and of the 2003 Berger Award from the National Immigration Project of the National Lawyers Guild. The Refugee and Asylum Project

recruits and trains volunteer attorneys, paralegals, and law students to represent individuals who have fled persecution.

The **National Association of Criminal Defense Lawyers (NACDL)** is a District of Columbia non-profit corporation with a membership of more than 10,000 attorneys nationwide – along with 80 state and local affiliate organizations numbering 28,000 members in 50 states. NACDL was founded in 1958 to promote study and research in the field of criminal law and procedure, to disseminate and advance knowledge of the law in the area of criminal justice and practice, and to encourage the integrity, independence and expertise of defense lawyers in criminal cases in the state and federal courts. Among NACDL's objectives are to ensure that appropriate measures are taken to safeguard the rights of all persons involved in the criminal justice system and to promote the proper administration of justice. In furtherance of its objectives, NACDL files approximately 35 *amicus curiae* briefs a year, including at least ten *amicus curiae* briefs in the U.S. Supreme Court, on a variety of criminal justice issues.

The **National Immigration Law Center (NILC)** is a non-profit legal support center dedicated to protecting and promoting the rights of low-income immigrants and their family members. NILC conducts trainings, produces legal publications, and provides technical assistance to non-profit legal assistance organizations across the country concerning immigrants' rights. NILC also conducts litigation to promote the rights of low-income immigrants in the areas of immigration law, employment, and public benefits. A major concern of the organization is to ensure the fairness and constitutionality of immigration law implementation. NILC has a direct interest in the issues in this case.

The **Northwest Immigrant Rights Project (NWIRP)**, founded in 1984, is a private, non-profit organization committed to defending and advancing the rights of immigrants and refugees. NWIRP provides direct legal services to immigrants, including representation to immigrant survivors of domestic violence, asylum seekers, family visa and naturalization

applicants, and those in removal proceedings. NWIRP is also involved in special projects that benefit large classes of immigrants and engages in public policy advocacy. NWIRP provides both direct representation and *pro bono* referral of cases involving detained non-citizens who are deemed inadmissible. As a legal services organization, Northwest Immigrant Rights Project has a vested interest in ensuring that the rights and basic freedoms of our clients are safeguarded under the law.

The **Political Asylum Project of Austin (PAPA)** is a non-profit organization offering free and low-cost immigration services to low-income individuals in Central Texas. PAPA's services include representation of long-term detainees seeking release from custody, including Mariel Cubans. PAPA has observed scores of Mariel Cubans with final orders of removal remain indefinitely detained in Central Texas and separated from their families for as long as eight years. PAPA is dedicated to ensuring due process and justice for all indefinite detainees.

The **World Organization Against Torture USA (WOAT)** is the U.S. affiliate of a worldwide network of more than 200 human rights organizations dedicated to the prevention of torture and other major human rights abuses, with each affiliate focusing primarily on human rights compliance in its own country. WOAT works extensively on refugee cases and issues, providing direct legal assistance in a select number of cases raising the most significant issues, as well as legal support and information clearinghouse services, with an emphasis on gender-based abuse and torture-related concerns. Many of those we have assisted who are seeking refuge from torture and persecution in the United States have faced long-term indefinite detention.

INTRODUCTION

Daniel Benitez has been imprisoned since October 2001 under an immigration detention scheme that affects countless aliens who arrive at our borders seeking freedom and security.[2] Many of these aliens are refugees and asylum seekers fleeing persecution and oppressive regimes. Instead of finding freedom, these individuals face detention, often in harsh prison conditions, if the United States chooses not to admit them into our country but is unable to remove them to another. Mr. Benitez and other similarly situated individuals can now be detained indefinitely, even when their removal from this country is impossible or unforeseeable and when there is no evidence that their release presents a threat to society or to national security. This limbo can last for years, even decades, and exacts severe emotional, physical, and mental hardship on detainees and their families.

This Court has held that such detention of *admitted* aliens raises constitutional concerns of such magnitude that a presumptive limit on their detention must be read into the authorizing statute.[3] The damage to liberty and fairness

2. The Department of Homeland Security (DHS), in its official compilation of immigration statistics, does not provide numbers of inadmissible aliens who cannot be deported and are held in detention after the 90-day post-final-deportation-order removal period. *See* U.S. Dep't of Homeland Security, *Yearbook of Immigration Statistics* (2002). The *Washington Post* has reported that 2,269 inadmissible aliens are currently held in immigration custody, more than half of whom have been held for more than six months. Charles Lane, *High Court to Consider Detention Case*, Wash. Post, Jan. 17, 2004, at A02. Effective March 1, 2003, the responsibilities of the Immigration and Naturalization Service (INS) were transferred to DHS. Responsibility for the enforcement of immigration laws now rests with the Bureau of Immigration and Customs Enforcement. This brief will continue to refer to INS, because most of the events it describes took place before the transfer of authority.

3. *Zadvydas v. Davis*, 533 U.S. 678 (2001) (interpreting 8 U.S.C. § 1231(a)(6)).

recognized by this Court in *Zadvydas* when legal permanent residents convicted of aggravated felonies are indefinitely detained is at least as troubling when Mariel Cubans and other aliens arriving at our borders, many of whom have never been convicted of a crime, are indefinitely detained. When there is no legal or practical possibility for removal, and when existing custody review procedures fail basic standards of fairness and accountability, the indefinite detention of non-admitted aliens is a practice inimical to fundamental values that shape and anchor our society.[4]

STATEMENT OF FACTS

Under the government's interpretation of 8 U.S.C. § 1231(a)(6) (2000), many individuals like Mr. Benitez face indefinite detention in prisons, jails, and detention centers across the country, because final deportation orders against them cannot be carried out in the foreseeable future. Those affected by this form of indefinite detention include asylum seekers fleeing oppressive regimes in their home countries and "inadmissible" aliens who have lived productively in our society for many years. Most of the individuals affected left situations of extreme social and political vulnerability to come to the United States. The unpredictability of the form, conditions, and review of their detention ensures that they remain vulnerable for as long as they live in this country. Their continued detention profoundly disrupts the lives of their spouses, children, and other family members, including U.S. citizens and permanent residents.

The petitioner in this case, Daniel Benitez, arrived as part of the "Mariel Boatlift," or "Freedom Flotilla," which was a singular episode in the history of this country's legal and political response to immigration. As documented in other filings before this Court, between 125,000 and 150,000 Cuban citizens

4. "[F]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (invalidating a state statutory scheme permitting commitment to a mental institution of a defendant acquitted for reason of insanity without a showing of mental illness).

journeyed to the United States when, between April and October 1980, Fidel Castro opened the port city of Mariel to those wishing to leave Cuba.[5] President Carter made a number of widely publicized statements welcoming these "Mariel Cubans" as refugees, and a special entry status was created for them as a step toward attaining permanent residence.[6]

Mariel Cubans constitute the most visible group of aliens affected by the policy of indefinite detention, because of their numbers, the extensive press coverage of their arrival, and Cuba's continuing refusal to accept those who have been ordered removed from the United States. However, Mariel Cubans are not the only group subjected to this indefinite detention scheme; the policy also affects other immigrants and asylum seekers who cannot be returned to their countries of origin.

Some of the individuals profiled below have never committed a crime. Others have been detained by the INS for periods far longer than the criminal sentences they served, in many cases for minor offenses. Many Mariel Cubans convicted of crimes served their sentences long ago, yet remain in detention, considered never to have entered the country that welcomed them and that has been their only home for 23 years. All of the individuals subjected to this detention policy have been imprisoned, often with dangerous criminal populations, with their only hope of release a review procedure that has been repeatedly found arbitrary and cursory.

Mariel Cubans

Xiomara Gonzalez has lived continuously in the United States since 1980, along with her daughter, who is a U.S. citizen, and her mother, a U.S. permanent resident.[7] Ms. Gonzalez is

5. *E.g.*, Brief for *Amici Curiae* Florida Immigrant Advocacy Center.

6. *Fernandez-Roque v. Smith*, 622 F. Supp. 887, 896-899 (N.D. Ga. 1985).

7. Brian Donohue, *A Boatlift to Freedom, A Life Behind Bars*, N.J. Star-Ledger, Oct. 22, 2003, at 1.

the grandmother of three U.S. citizen children.[8] The INS detained her after she completed a prison sentence for a drug possession conviction. A U.S. district court judge ordered her release from indefinite detention only after a newspaper reported on the failed review process that kept her in INS custody for more than a year after completion of her sentence.

Ms. Gonzalez fled Cuba and arrived in the United States on June 21, 1980. She served a one-year sentence for a 1987 drug conviction. In 1995, her parole was revoked after she was convicted of a drug possession charge.[9] She studied for and received her high school equivalency diploma during her incarceration.[10] Upon her release from state custody, the INS detained Ms. Gonzalez at the Hudson County Correctional Center in New Jersey, and she was ordered removed on July 26, 2002.[11] Ms. Gonzalez submitted multiple requests for parole to the Cuban Review Panel,[12] but received no

8. Telephone Interview by Kevin Kish with Xiomara Gonzalez (February 19, 2004).

9. *Gonzalez v. Ashcroft*, 278 F. Supp. 2d 402, 404 (2003).

10. Brian Donohue, *Judge Frees Woman Caught in Legal Limbo as Mariel Boatlift Felon*, N.J. Star-Ledger, Oct. 24, 2003, at 15.

11. *Gonzalez*, 278 F. Supp. 2d at 405.

12. This review is mandated by law. 8 C.F.R. § 212.12 (2001). Parole determinations and revocations respecting Mariel Cubans. Also known as the "Cuban Review Plan," this statute governs the granting or withholding of parole for Mariel Cubans in custody.

> The Plan provides that each detainee will be evaluated by a Cuban Review Panel, comprised of two members of the INS professional staff. In order to recommend that a particular detainee be paroled, the panel members must conclude that he or she is presently non-violent, is likely to remain non-violent, and is not otherwise likely to violate any parole conditions in the event of his or her release.

(Cont'd)

response.[13] After thirteen months, she filed a petition for a writ of *habeas corpus* in federal court. The district court denied her petition, holding that, as an inadmissible alien, she was not entitled to *Zadvydas* protections. Nevertheless, the court expressly ordered the Cuban Review Panel to provide the required custody review within 30 days of the decision.[14]

Despite the court's unambiguous order, Ms. Gonzalez did not receive any response from the INS. One month after the court-ordered deadline for review, a newspaper reporter profiled her plight.[15] In an emergency hearing the next day, the district court found that the INS's continued failure to review her detention impermissibly compromised Ms. Gonzalez's due process rights and ordered her immediate release.[16]

(Cont'd)

> The Plan also provides a list of seven, apparently non-exclusive factors to guide the Panel in reaching its determinations. If the Panel cannot recommend parole based solely on the detainee's paper record, the Panel must interview the detainee. Although the detainee may be 'accompanied' by a person of his choice at the interview, he has no right to counsel provided by the government, and no apparent right to review his record, cross-examine government witnesses, or call witnesses on his own behalf. The interview, in short, is not an adversarial proceeding.

Chavez-Rivas v. Olson, 207 F. Supp. 2d 326, 329 (D.N.J. 2002) (internal citations omitted).

13. The Panel had evidently performed a custody review and decided to detain Ms. Gonzalez, but she was never notified of this decision and consequently had no ability to appeal it. *Gonzalez*, 278 F. Supp. 2d at 405.

14. *Id.*

15. Donohue, *A Boatlift to Freedom, A Life Behind Bars, supra.*

16. Donohue, *Judge Frees Woman Caught in Legal Limbo as Mariel Boatlift Felon, supra.*

Ms. Gonzalez had received no notification of parole review during nearly 16 months of detention, despite explicit statutory obligations and a judicial order that such review be conducted. At the emergency hearing, the government claimed that a decision had been made to release Ms. Gonzalez, but that this recommendation was being reviewed by officials at headquarters in Washington.[17] In explaining the delay, the government stated: "[A]pparently the importance and urgency of it was not made clear to headquarters."[18]

Omar Rodriguez-Alonso, a Mariel Cuban, spent nearly twenty years in INS detention. In the early 1980s, he served a short period on probation and in prison for burglary and marijuana possession charges.[19] Following a 120-day sentence for possession of marijuana in 1984, the INS detained him. He was 30 years old. When he was finally released in 2003, he was 49. Mr. Rodriguez-Alonso currently lives in Los Angeles and helps other newly paroled Mariel Cubans resettle and integrate successfully into the community.[20]

Mr. Rodriguez-Alonso arrived in the United States in 1980. Upon completion of a 120-day sentence for marijuana possession, the INS detained him, and he received a final deportation order in 1987. Fourteen years later, the Cuban

17. 8 C.F.R. § 212.12 grants ultimate discretionary authority for granting parole to an Associate Commissioner for Enforcement at INS headquarters in Washington, D.C. The Washington, D.C. office may refuse to grant parole to a detainee for any reason, even when a review panel has recommended release. 8 C.F.R. § 212.12(e).

18. Transcript of Proceedings, *Gonzalez v. Ashcroft*, Civ. No. 03-2290, at 5 (D.N.J. Oct. 23, 2003); Donohue, *Judge Frees Woman Caught in Legal Limbo as Mariel Boatlift Felon, supra.*

19. Government's Response to Court's November 18, 2002 Order, *Omar Rodriguez Alonso v. Al Herrera*, No. 02-CV-8041-TJH (MAN) (C.D. Cal. Jan. 9, 2003).

20. Mark Dow, *American Gulag: Inside U.S. Immigration Prisons*, Berkeley: University of California Press (forthcoming June 2004).

Review Panel recommended parole for Mr. Rodriguez-Alonso.[21] The panel spoke highly of Mr. Rodriguez-Alonso:

> [He] seems to be very intelligent. He speaks three languages. . . . His criminal history appears non-violent. He presented a letter of support from a church group in Virginia. The panel feels that, if given the opportunity, [he] would do well if released to a halfway house again.

Despite the Panel's positive recommendation, Mr. Rodriguez-Alonso's parole was rejected by the Washington head office of the INS.[22] The INS again denied his parole in 2003, citing only nineteen-year-old criminal charges (charges that had been previously deemed "non-violent") and a report of a non-violent infraction in the facility where he was being detained; the INS asserted that it was not "clearly evident" that Mr. Rodriguez-Alonso was likely to remain non-violent if released into a halfway house.[23]

Unless *Zadvydas* protection is extended to inadmissible aliens, other individuals who threaten no harm to our society will be subjected to the caprices of the review system that deprived Mr. Rodriguez-Alonso of nearly twenty years of freedom.

Valentin Chavez-Rivas' long-term detention also resulted from the arbitrariness of the Cuban Review Panel process. A U.S. district court found the process so arbitrary that it ordered his release. Like thousands of other Mariel Cubans, Mr. Chavez-

21. Cuban Review Summary Sheet, Rodriguez-Alonso (Nov. 1, 2001).

22. Final Notice of Parole Review, Rodriguez-Alonso, Cuban Review Plan, United States Department of Justice Immigration and Naturalization Service (Washington, D.C. Nov. 28, 2001).

23. Final Notice of Parole Review, Rodriguez-Alonso, Cuban Review Plan, United States Department of Justice Immigration and Naturalization Service (Washington, D.C. Oct. 6, 2003).

Rivas came to the United States in 1980 in search of a better life. The INS detained him upon arrival, but soon paroled him into the country. Mr. Chavez-Rivas completed sentences for three drug convictions. After serving three years for his last conviction, he was released in 1998 and detained by the INS. The INS reviewed his detention, pursuant to the Cuban Review Plan, in 1999, 2000, 2001, and 2002,[24] but denied parole each time. A federal district court heard Mr. Chavez-Rivas' *habeas* petition in June 2002 – more than four years after the INS took him into custody – and highlighted the inadequacies of the review process:

> In 1999 and 2000, the Panel's written explanation for each denial of parole relied in part on the fact that Chavez-Rivas had been arrested on a number of charges that were later dismissed, or for which no disposition was known. The record before me contains no explanation for the Panel's denial of parole in 2001 or 2002.[25]

The District Court found that in four reviews over a period of more than four years, Mr. Chavez-Rivas had never received a fair parole hearing. Instead, the INS repeatedly and summarily denied parole without inquiring into whether he was likely to remain non-violent, pose a threat to the community, or violate the terms of his parole – the inquiry mandated by statute.[26]

Mr. Chavez-Rivas had the good fortune to obtain counsel to file a *habeas* petition on his behalf and have his indefinite detention examined by a federal district court. But most in his situation lack the language skills, access to information, and knowledge to secure counsel. Without a finding from this Court that the *Zadvydas* presumption against indefinite detention

24. 8 C.F.R. § 212.12.

25. *Chavez-Rivas*, 207 F. Supp. 2d at 329.

26. 8 C.F.R. § 212.12(d)(2).

applies to inadmissible aliens stopped at the border, people in Mr. Chavez-Rivas' position will remain in indefinite INS detention with no reasonable expectation of a fair review or the restoration of their freedom.

Other Inadmissible Aliens Subject to Indefinite Detention

Ali Fekaouni is an Algerian citizen with no criminal history who was detained by the INS for two and a half years. Mr. Fekaouni arrived in the United States on June 25, 2000 and requested to be paroled into the country due to political turmoil in Algeria.[27] INS officials took him into custody, determining that he was inadmissible because he did not possess proper entry or travel documents. Mr. Fekaouni's application for asylum was denied, and his removal order became final on January 31, 2001.[28] The INS detained him for two and a half years while unsuccessfully trying to deport him.

Mr. Fekaouni fully cooperated with the INS to facilitate his deportation. From the summer of 2001 to the summer of 2002, he voluntarily participated in interviews with the Algerian Consulate, which, on three separate occasions, refused to issue travel documents because he lacked identification.[29] Mr. Fekaouni tried to contact his father in France to obtain a birth certificate, but never received a response. He requested travel documents from other countries, including France, Tunisia, and Morocco, but received no responses.[30]

Mr. Fekaouni, transferred at least seven times during his detention, said: "They don't tell me nothing. I don't know where

27. Report and Recommendation, *Fekaouni v. INS, et al.*, Civ. No. C02-1834-RSM (MJP) (W.D. Wash. Jan. 24, 2003).

28. *Id.*

29. *Id.*

30. *Id.*

I am going or why I am going, I don't know nothing."[31] He described his months confined at the INS-contracted Correctional Services Corporation detention facility in Seattle: "In one room, they put sometimes 20 people, sometimes 25 people, from all different places. You can't have privacy, you can't have no space."[32]

In May 2001, Mr. Fekaouni was able to communicate with a lawyer after receiving her contact information from prisoners at the city jail where he was being held.[33] Until then, he said, he had been ignorant of INS procedures and of his rights.[34] Mr. Fekaouni's lawyer filed a petition for a writ of *habeas corpus*, which the district court granted, finding that the detention of inadmissible aliens more than six months after the 90-day post-deportation-order removal period violated *Zadvydas* and *Xi v. Ashcroft*, 198 F.3d 382 (9th Cir. 2002).[35] Mr. Fekaouni was finally released from detention in February 2003. Since his release, he has settled in Tacoma, Washington, where he has a steady job at a landscaping company.[36]

The INS detained Mr. Fekaouni for nearly two years after the 90-day removal period following his final order of

31. Telephone Interview by Eunice Lee with Ali Fekaouni (Feb. 18, 2004).

32. *Id.*

33. *Id.*

34. *Id.*

35. Order Granting Petition For Writ of *Habeas Corpus*, *Fekaouni v. INS, et al.*, Civ. No. C02-1834-RSM (MJP) (W.D. Wash. Jan. 24, 2003). The government appealed the district court decision; however, this appeal was dismissed in September 2002 due to the appellant's failure to respond to a court order to show cause why the district court judgment should not be summarily affirmed. *See* Order, *Fekaouni v. INS, et al.*, No. 03-35348 (9th Cir. August 27, 2003).

36. Telephone Interview by Eunice Lee with Ali Fekaouni (Feb. 18, 2004).

deportation. Mr. Fekaouni cooperated with the INS, had no criminal record, and was never determined to be a danger to the community. He said, "I don't know what happened to me. I didn't commit any crime. Every day, I wonder about what was happening. I think maybe they keep me here for my life. I don't have a chance to get out."[37] Had he not been transferred to a jail where fellow prisoners pointed him to a lawyer, and were it not for the Ninth Circuit ruling in *Xi* that inadmissible aliens must benefit from *Zadvydas* protection, Mr. Fekaouni might still be languishing in jail. Unless this Court finds that *Zadvydas* protections apply to inadmissible aliens, other innocent people like Mr. Fekaouni risk indefinite detention even though there is no reasonably foreseeable possibility that they will be deported.

Xue Wan Yun, a native and citizen of China, was taken into custody upon his arrival at Detroit Metro Airport on November 9, 2001 and held in INS detention for 18 months.[38] He stated that he wanted to apply for asylum, but was ordered deported and chose not to contest that order. Mr. Yun tried to cooperate with INS efforts to deport him. With an elderly, ailing mother and a young daughter in China, he wrote several letters to the Detroit District Office of the INS, expressing his wish to return to China as soon as possible. He received no response.[39] In July 2002, a month after authority over his custody status was transferred to the INS Headquarters Post-Order Detention Unit (HQPDU), his status was finally reviewed. The INS determined that Mr. Yun was not a danger to the community, but nevertheless ordered his continued detention, finding that he was a flight risk despite his expressed desire to return to China and his decision not to appeal his deportation order.[40]

37. *Id.*

38. Petition for Writ of Habeas Corpus, *Yun v. Ashcroft*, Case No. 03-CV-70253 (E.D. Mich. Jan. 22, 2003).

39. *Id.*

40. *Id.*

Mr. Yun secured counsel and wrote letters asking the HQPDU to clarify his removal delay and to make a new custody determination. He provided a letter of support from a family friend in New York who was willing to house Mr. Yun until his removal. The HQPDU never responded to his requests. In her October 25, 2002, response to a letter of inquiry from U.S. Senator Carl Levin, the district director stated that "a travel document has been applied for. As soon as a passport is received from the Chinese government, travel arrangements will be made and he [Mr. Yun] will thereafter be flying to China."[41] Eight months after that assertion, Mr. Yun remained in INS custody.

Mr. Yun's lawyer finally sought *habeas* relief, which was granted in April 2003. The government appealed the district court's decision, but the court of appeals stayed briefing in the case pending a ruling in *Benitez v. Mata*.[42] While Mr. Yun was released after 18 months' detention, his continued freedom now depends on the outcome of the present case. Unless this Court extends *Zadvydas* protections to inadmissible aliens, Mr. Yun and other individuals who have committed no crimes and pose no threat to our society will live with the persistent threat of having their freedom indefinitely deprived.

Chi Thon Ngo, who fled hardship and oppression in his native Vietnam, was paroled into the United States in 1982 during the time of a massive outflow of refugees from Vietnam. Convicted of state criminal charges in 1989, he was sentenced to four to six years in prison. In 1995, the state found Mr. Ngo suitable for release into the community and released him on parole.[43] The INS immediately took him into custody and began exclusion proceedings against him. Mr. Ngo received a final

41. *Id.*

42. Order, *Yun v. Ashcroft*, Case No. 03-1744 (6th Cir. Dec. 16, 2003).

43. "The record does not disclose exactly when petitioner came into INS custody, but it appears to have been around the middle of 1995." *Chi Thon Ngo v. INS*, 192 F.3d 390, 392 (3rd Cir. 1999).

exclusion order on July 6, 1995.[44] His removal could not be effectuated, however, because "the governments of Vietnam, Laos and Cambodia have refused to repatriate citizens who have been ordered to be deported from the United States."[45] Mr. Ngo was detained in county jails in Pennsylvania and later transferred to an INS detention facility in New Orleans.[46] Only after four years, when Mr. Ngo was able to secure *habeas* relief from a federal court, was he released from INS detention. The Third Circuit Court of Appeals, in upholding the district court's grant of *habeas*, described the lack of due process afforded to Mr. Ngo:

> [T]he petitioner in this case was repeatedly denied parole by INS officials based on no more than a reading of his file that listed years-old convictions. . . . The INS made no effort to determine if such conduct was presently likely to be repeated or whether it could be discouraged by requiring appropriate surety. Through at least four denials of parole, the INS continued to cite to the petitioner's now nearly ten-year old convictions as justification to confine him.
>
> We do not suggest that these convictions are no longer relevant. Due process is not satisfied, however, by rubber-stamp denials based on temporally distant offenses. The process due even to deportable and excludable aliens requires an opportunity for an evaluation of the individual's current threat to the community and his risk of flight.[47]

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44. *Id.*

45. *Id.* at 395.

46. *Id.*

47. *Id.* at 398.

Over the course of four years, after cursory review of Mr. Ngo's record and without a meaningful inquiry as to whether he would pose a flight risk or a danger to the community, the INS had repeatedly and summarily denied him parole. Mr. Ngo lost years of his life in unnecessary detention after the state found him suitable for release into the community. Absent a ruling from this Court that *Zadvydas* protections apply to them, other inadmissible aliens with no foreseeable possibility of deportation will risk lengthy or even permanent detention on the basis of cursory INS review and arbitrary denial of parole.

Zaki Mohammad Saleh, a citizen of Iraq and a member of the Turkmen ethnic minority in that country, personally experienced the horrors of Saddam Hussein's regime. He escaped to Turkey and made his way to the United States in April 2002 to seek asylum.[48] He has been in custody ever since, imprisoned with criminals, with neither freedom nor deportation in his foreseeable future.

The Iraqi government executed Mr. Saleh's father for political dissent in 1974, and Mr. Saleh was compelled to join Saddam Hussein's army in 1983. He served until 1991, when, in an effort to avoid battle with U.S. troops in Operation Desert Storm, he shot himself in the shoulder. Iraqi Secret Service guards tortured Mr. Saleh by applying electric shocks and repeatedly raping him to make him confess to shooting himself. After he confessed, he was sentenced to death by firing squad,[49] but fled to Turkey, where he was granted a temporary residency permit.[50] His entire family ultimately fled Iraq to Turkey and Germany.[51]

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48. INS Form I-589, Application for Asylum and for Withholding of Removal. Appendix at 13a.

49. *Id.*

50. Letter from United Nations High Commissioner for Refugees to Lisa Ramirez, Attorney, Catholic Charities of Orange County, Inc. (Oct. 9, 2002). Appendix at 1a.

51. Telephone Interview by Mary J. Hahn with Lisa Ramirez (Feb. 11, 2004).

Mr. Saleh's asylum claim was denied based on a determination that he had resettled in Turkey since fleeing Iraq, and he was ordered removed to Turkey.[52] Turkish immigration law, however, does not allow for the return of non-European asylum-seekers and refugees.[53] Iraq has no procedure for receiving asylum seekers and others deported from the United States.[54] Mr. Saleh waived further appeal of his asylum determination, hoping to be deported or released from the detention in which he had been held since his arrival in the United States.

At the end of the 90-day post-removal-order detention period, the INS denied Mr. Saleh parole, citing his alleged failure to provide biographical information.[55] He immediately wrote to his lawyer:

> I'm told I refused to cooperate giving some information about myself. I don't understand the letter or what they want. I need your help please. I want to cooperate so I can get out of custody. My English is not good and I don't understand what I need to do.[56]

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52. Order of the Immigration Judge in the Matter of Saleh, Case No: A 77-998-654 (Dec. 17, 2002).

53. Letter from United Nations High Commissioner for Refugees to Lisa Ramirez, Attorney, Catholic Charities of Orange County, Inc. (Oct. 9, 2002), appendix at 1a; Letter from United Nations High Commissioner for Refugees to Lisa Ramirez, Attorney, Catholic Charities of Orange County, Inc. (Oct. 21, 2002), appendix at 3a.

54. Letter from Lisa Ramirez, Attorney, Catholic Charities of Orange County, Inc. to Officer Robert Naranjo, Headquarters Post Decision Unit (July 3, 2003). Appendix at 5a.

55. INS Notice of Failure to Comply Pursuant to 8 CFR § 241.4(g) (Mar. 14, 2003). Appendix at 8a.

56. Letter from Zaki Saleh to Lisa Ramirez, Attorney, Catholic Charities of Orange County, Inc. (Apr. 7, 2003). Appendix at 10a.

Mr. Saleh wrote to his family and ultimately obtained an Iraqi identification document by October 7, 2002.[57] A permanent resident has been willing since at least August 2002 to sponsor Mr. Saleh and assure his appearance at court dates,[58] and Mr. Saleh has never been considered dangerous to the community. Nevertheless, he has been detained eleven months beyond the 90-day removal period following his final order of deportation.

In October 2003, Mr. Saleh was moved to a detention facility in Las Vegas for long-term detainees, where he is housed in a cellblock with convicted criminals. He has communicated to his lawyer his urgent concern for his physical safety:

> [I] fear for my safety at this facility. There is a lot of arguing and fighting taking place here. I am an I.N.S. inmate (non-criminal), and I am being housed in a block full of criminals. I do not feel safe here. . . .[59]

Turkey's unequivocal refusal to accept his return has exacerbated Mr. Saleh's sense of hopelessness. Without a ruling that *Zadvydas* protections must be extended to inadmissible aliens, Mr. Saleh faces continued detention among convicted criminals, with no foreseeable hope of release.

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57. Letter from Lisa Ramirez, Attorney, Catholic Charities of Orange County, Inc. to Officer Robert Naranjo, Headquarters Post Decision Unit (July 3, 2003). Appendix at 5a.

58. *Id.*

59. Letter from Zaki Saleh to Lisa Ramirez, Attorney, Catholic Charities of Orange County, Inc. (Oct. 28, 2003). Appendix at 11a.

ARGUMENT

The individuals profiled in this brief fled oppressive countries, but have been subjected to harsh conditions of detention here, often mixed in with the general criminal population. They have been imprisoned pending removal, yet their removal is impossible or unforeseeable. The length of their continued detention is out of their control, even when they make their best efforts to cooperate in their own deportation; indeed, the government suggests that 8 U.S.C. § 1231(a)(6) authorizes their indefinite detention on the basis of their status as inadmissible aliens alone.[60] Federal district courts have found repeatedly that existing administrative parole review procedures are woefully inadequate and arbitrary. Under the Eleventh Circuit's ruling, individuals who have not committed any crimes or administrative infractions in detention during removal proceedings, the 90-day statutory post-removal period, and the six-month period established in *Zadvydas* can still be held indefinitely as a matter of discretion, despite no showing by the government that their release would endanger society or that they pose a risk of flight.

The unreliability of the review process, coupled with the difficulty detainees have in obtaining counsel to adequately raise their claims, results in the continued detention of individuals who pose no threat to society and who have no other hope for freedom. In addition to the privation suffered by the detainees themselves, their detention exacts severe penalties on families and communities. Extending *Zadvydas* protection to such individuals would correct systemic deficiencies in current parole review processes by requiring the government to present evidence of foreseeable removal

60. *See* Opp. Cert. Brief at 4-5.

or dangerousness in order to prolong the detention of inadmissible aliens who cannot be deported.

I. Indefinite detention results in extreme mental, physical, and emotional hardship to detainees, including persons fleeing persecution abroad and others in positions of great vulnerability.

When detention of an inadmissible alien cannot be justified by foreseeable deportation or a finding of dangerousness, continued detention exacts a cruel price. Human Rights Watch reports:

> The stress of months or years in INS detention takes a severe emotional toll on INS detainees. The punitive environment of a jail, the detainees' frequent fear of local inmates, and the uncertainty of when, if ever, they will be released or deported is often too much to bear and has led to depression and suicide attempts.[61]

Alberto Herrera, a Cuban who had never committed a crime in the United States, was detained immediately upon his arrival after the Mariel boatlift. He was kept in prison because he could

61. Human Rights Watch Report, *United States: Locked Away: Immigration Detainees in Jails in the United States*, Vol. 10, No 1(G) (1998), *at* http://www.hrw.org/reports98/us-immig/. *See also* Physicians for Human Rights USA Report, *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers*, (June 2003), *at http://www.phrusa.org/campaigns/asylum_network/detention_execSummary/dr1-toc.html* (hereinafter "PHR Report").

"Eighteen participants (26%) reported thoughts of suicide while in detention. . . . Forty nine (70%) stated that overall their mental health had worsened substantially while in detention." In a 2003 report, Physicians for Human Rights found "extremely high" rates of depression, anxiety, and post-traumatic stress disorder among detained asylum seekers. PHR Report.

not find a sponsor.[62] In despair, he attempted suicide six times between 1983 and 1987. Suicide attempts by other detained Mariel Cubans are regularly reported.[63] One lawyer noted that visiting Mariel Cubans is akin to "visiting people who are buried alive."[64]

Detainees are often confined without normal activities and isolated from their loved ones. Mr. Saleh, for example, has been held in facilities where he could not purchase phone cards that would allow him to contact family members.[65]

This emotional trauma is compounded when INS detainees are forced to share cells with convicted prisoners and live with fear for their physical safety. One detainee, for example, reported that his cellmate, a convicted murderer, had a nightly ritual of sharpening his knife and talking about killing people.[66] Immigration detainees are often subjected to the same treatment as the general prison population.[67] Ali Fekaouni recalled of his detention: "It is a prison, I feel like criminal. They mix me up with criminals and I feel like it even though I never committed

62. His only crimes in Cuba were the unsuccessful thefts of two pounds of goat cheese and two pairs of pants. *See* Mark S. Hamm, *The Abandoned Ones: The Imprisonment and Uprising of the Mariel Boat People* at 60-61, 63 (Boston: Northeastern University Press, 1995). Herrera remained in prison until at least 1995, when this book was published.

63. *Id.* at 88.

64. Sally Sandidge, *On the Road Again*, Atlanta Lawyer (Fourth Quarter 1992), at 9.

65. *See* PHR Report, Ch. V

66. PHR Report, Ch. VII.

67. PHR Report, Ch. VI (describing inadequacies of medical care and practice of transporting detainees in leg shackles and handcuffs); Ch. VII (detailing detainees' experiences in prisons and local jails, including lack of access to outdoors, exercise, fear of prison population).

any crime."[68] Prison guards have also been accused of abusing INS detainees. In 1989, for example, thirteen Asian detainees settled a lawsuit detailing how prison guards ordered inmates to beat INS detainees in what was described as a "staged gladiatorial contest inside the prison."[69]

A particular irony emerges from the indefinite detention of individuals fleeing oppressive regimes abroad. Zaki Mohammad Saleh, a member of a historically persecuted group in Iraq, fled his country for the safety promised by the traditions and policies of the United States. He is being detained in a cellblock with convicted criminals despite the current impossibility of his deportation to Iraq or Turkey, and despite the lack of any evidence to indicate he would present a danger to society. A sponsor is willing to accept responsibility for Mr. Saleh and assure his appearance at future hearings.[70] Mr. Saleh has expressed his desire to provide assistance to immigration officials and has cooperated by obtaining his identification documents. Nevertheless, he has been denied parole for an alleged lack of cooperation.[71]

As with many immigration detainees, Mr. Saleh's anxiety for his future is compounded by his limited ability to understand English, limited access to legal counsel, and fears

68. Telephone Interview by Eunice Lee with Ali Fekaouni (Feb. 18, 2004); *see also* PHR Report (quoting one detainee as stating: "*They don't call it jail, they call it detention. But it is jail. I thought I would be free when I got to America. I came here to find peace and be able to live in peace.*")

69. Chris Hedges, *Suit Details the Beatings of Detainees in Louisiana*, N.Y. Times, Jan. 2, 2001.

70. Letter from Lisa Ramirez, Esq. to Officer Robert Naranjo, July 3, 2003. Appendix at 5a.

71. Letter from Zaki Saleh to Lisa Ramirez, Apr. 7, 2003. Appendix at 10a.

for his physical safety.[72] He has now been detained for nearly a year since the expiration of the 90-day removal period. When the government makes no showing that custody is justified, continued detention imposes unnecessary suffering and betrays the notions of fairness and liberty at the core of our society.

II. Detainees' freedom is left to the caprices of arbitrary and cursory procedures of review.

Court decisions have repeatedly held that parole review proceedings for inadmissible aliens are arbitrary and cursory. Mr. Fekaouni recalls only perfunctory encounters with immigration officers: "When I spoke to them, they give me 2 minutes, 3 minutes. I ask them why are they keeping me, how about my deportation, why do I stay in jail for nothing. They say, wait till next week, wait till next month. They tell me nothing."[73] Xiomara Gonzalez, Xue Wan Yun, Valentin Chavez-Rivas, Chi Thon Ngo, and Ali Fekaouni were released from detention only after federal courts found existing parole review processes to be so deficient as to unacceptably compromise due process rights.

As in the cases of Mr. Ngo and Omar Rodriguez-Alonso, parole denials are often based on nothing more than

72. Human Rights Watch has reported on the stress undergone by non-criminal immigration detainees like Mr. Saleh. *See* Human Rights Watch Report, *United States: Locked Away: Immigration Detainees in Jails in the United States*, *supra*.

> For asylum seekers in local jails, waiting in detention can be psychologically devastating. Post traumatic stress disorders, lack of language skills, ignorance of legal rights, lack of access to lawyers, fear of government authorities, and a criminal environment where they may be housed with convicted criminals all combine to exact special suffering on asylum seekers.

73. Telephone Interview by Eunice Lee with Ali Fekaouni (Feb. 18, 2004).

convictions that date back years, even decades, prior to the parole review.[74] The Third Circuit Court of Appeals characterized such parole reviews as "rubber stamp denials."[75] Valentin Chavez-Rivas was also repeatedly denied parole, twice with no explanation and twice on the basis, in part, of past arrests for charges that were later dropped.

Even where a local parole review panel interviews a detainee, reviews his record, and recommends his release, officials in Washington without any first-hand knowledge about the individual's care can and do reject these recommendations. Omar Rodriguez-Alonso spent an additional two years in detention despite a recommendation of release by the local parole review panel. Similarly, a panel recommendation for Xiomara Gonzalez's release was still being reviewed in Washington a month after a court-ordered deadline for a decision had passed.

Although some detainees have been ordered released by federal courts, *habeas* review of parole determinations is inadequate protection from unjustified detention. Access to courts is contingent upon knowledge of rights, access to libraries and documentation, and, often, assistance of counsel. Human Rights Watch reports:

> [A]ccess to counsel is usually seriously compromised when immigrants are detained by

74. *Chi Thon Ngo v. INS*, 192 F.3d 390 (1999). *See also*, Inter-American Comm. H.R., *Report No. 51/01*, *Case 9903*, *Rafael Ferrer-Mazorra*, *et al.*, (United States), *in* IACHR Annual Report 2000, para. 224. The Inter-American Commission on Human Rights found:

> [C]ertain petitioners have been denied parole based to a significant extent upon their criminal histories, while other petitioners having comparably more serious criminal histories for similar offenses have been released, and the State's descriptions of the cases do not refer to any factors that would appear to justify these petitioners' dissimilar treatment.

75. *Chi Thon Ngo*, 192 F.3d at 398 (3rd Cir. 1999).

> the INS, especially in local jails. Incarceration far from friends and family who can locate and pay for lawyers, frequent transfers from facility to facility, restrictive visitation policies and limited telephone access create significant obstacles to adequate representation.[76]

Without contact with counsel, many detainees remain completely ignorant both of immigration procedures and of applicable law. Mr. Fekaouni secured legal assistance only after other prisoners referred him to an attorney. Many detainees were frequently moved between distant detention facilities, which makes retaining counsel difficult, if not impossible. Mr. Saleh, for example, was moved from Santa Ana, California, to a detention facility in Las Vegas. Often, the INS does not even notify legal counsel when their clients are transferred.[77] The deficiencies of the existing review procedures, combined with the special difficulties encountered by aliens seeking judicial review of those procedures, introduce a level of arbitrariness into the detention system that offends the most basic concepts of justice.

III. Indefinite detention of Mariel Cubans and other inadmissible aliens results in extreme hardship to productive members of society, their communities, and their family members, including U.S. citizens and permanent residents.

Two days after her court-ordered release, Xiomara Gonzalez met two of her three grandchildren for the first time.[78] Ms. Gonzalez now hopes to establish a relationship

76. Human Rights Watch Report, *United States: Locked Away: Immigration Detainees in Jails in the United States*, *supra*.

77. *Id.*

78. Telephone interview by Kevin Kish with Xiomara Gonzalez (Feb. 19, 2004).

with her U.S. citizen grandchildren and to help care for her own aging mother, a permanent resident who has had difficulty supporting herself financially while Ms. Gonzalez was detained.[79] Ms. Gonzalez was not the only person who suffered from her prolonged detention beyond the 90-day removal period. Extensive social science literature documents the disruptive nature of detention on families and communities generally,[80] and the suffering occasioned by a loved one's detention is amplified when the detention is neither linked to a crime nor has a foreseeable end.

Family members of detained Mariel Cubans have engaged in a number of hunger strikes to call attention to the arbitrary nature of the detention process and the delays in providing statutorily mandated reviews. In March 1999, for example, six parents went without food to force the INS to set a date for the review of their sons' cases. "We are afraid that [local INS director] Mr. Wallis will put the files in a drawer," said striker Eladio Alfonso. After 47 days, the INS set a date to interview and review the six detainees. Upon review, five of the six detainees were released.[81]

The sacrifices that family members have made to secure adequate custody review for their loved ones illustrate the depth of suffering and frustration generated by indefinite detention. This suffering is exacerbated by detention policies that ignore family and community ties:

> INS detainees are frequently transferred from facility to facility and state to state. Decisions about when and where detainees are transferred are made at the district level and informed by such

79. *Id.*

80. For a discussion and review of the literature, *see* John Hagan and Ronit Dinovitzer, *Collateral Consequences of Imprisonment for Children, Communities, and Prisoners*, 26 Crime & Just. 121 (1999).

81. Andres Vigliucci, *Hunger Strikers to Forgo Fluids Until Krome sets a Decision Date*, Miami Herald, Apr. 30, 1999.

things as court appearances, immigration case status and availability and cost of bed space, but the INS rarely considers the location of families, friends, or legal counsel.[82]

Indefinite detention also ignores the valuable contributions individuals may offer their communities. After nearly twenty years of detention, Mr. Alonso-Rodriguez now helps other Cubans adjust to their lives in the United States.

CONCLUSION

For the reasons stated above, *Amici Curiae* urge the Court to reverse the decision of the Court of Appeals of the Eleventh Circuit.

Respectfully submitted,

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82. Human Rights Watch Report, *United States: Locked Away: Immigration Detainees in Jails in the United States*, *supra*.

83. Amici are grateful to Neerav Kingsland, Kevin Kish, Eunice Lee, and Julie Maupin of the Allard K. Lowenstein International Human Rights Clinic at Yale Law School for their extraordinary contributions to this brief.

[Letterhead of United Nations High Commissioner
For Refugees]

9 October 2002

Ms. Lisa Ramirez, Attorney
Catholic Charities of Orange County, Inc.
1800 E. McFadden Avenue
Santa Ana, CA 92705

Re: Request for Assistance / Saleh / Iraq / ROW # 72798

Dear Ms. Ramirez:

I am writing in response to your recent request for assistance from our Office regarding Mr. Saleh. This letter is being sent to you by facsimile in the interest of time; the original will be mailed to you. You provided our office with some factual background on his circumstances and asylum claim and inquired whether he currently has legal status or residency in Turkey and whether Turkish immigration law allows for refugees to be returned to Turkey.

We have received an email correspondence dated 8 October 2002 from the UNHCR Office in Ankara, Turkey. According to the records of that office, Mr. Saleh Zaki Mohammadi registered with UNHCR on April 1, 1991 and interviewed twice, on April 29, 1992 and July 30, 1992. His asylum application was rejected with no right to appeal, according to UNHCR policy applied in 1991 to Iraqi asylum seekers.

Our office informs us that Mr. Saleh entered Turkey and obtained his residency permit right after the Gulf War, according to a policy implemented for Iraqi asylum seekers who fled Iraq in 1991. We are also informed that Mr. Saleh

would have been eligible to apply for Turkish citizenship after five years of uninterrupted legal residence in Turkey under Turkish law. If Mr. Saleh applied for and received Turkish citizenship, then he would have the right to return to Turkey. However, if not, then he has no legal status or residency in Turkey. In addition, Turkish law does not allow for refugees and rejected asylum-seekers to return.

We note that though Turkey is a signatory to the 1951 Convention Relating to the Status of Refugees, it did so with a geographical limitation, such that non-European refugees are only granted temporary protection in Turkey. Nearly all of these refugees need to be resettled by UNHCR to other countries.

I hope that this information is useful. Please do not hesitate to contact me if I can be of further assistance. In all future correspondence to this office, please include the five-digit ROW number noted above.

Sincerely,

/s/ Larry Katzman

Larry Katzman
Legal Counselor

[Letterhead of UNHCR]

21 October 2002

VIA FACSIMILE (714) 542-3020

Lisa Ramirez, Esq.
Catholic Charities of Orange County, Inc.
1800 E. McFadden Ave.
Santa Ana, CA 92705

Re: Request for Assistance / Saleh / Iraq / ROW # 72798

Dear Ms. Ramirez:

I am writing in response to your request for clarification of whether your client, Mr. Zaki Saleh, would at this time be allowed entry into Turkey.

As we indicated in our letter of 9 October 2002, Mr. Saleh was not recognized as a refugee by UNHCR and cannot be readmitted to Turkey as a refugee.

Our Office cannot confirm Mr. Saleh's immigration status while he was in Turkey. As we mentioned in our letter of 9 October 2002, under the 1934 Settlement Law of Turkey, individuals of Turkmen ethnicity have the opportunity to apply for Turkish citizenship after five years of uninterrupted legal residence. This law is applied in a discretionary manner. If Mr. Saleh did not become a Turkish citizen during his stay in Turkey or gain some other type of permanent status, he has no right to reenter Turkey or to reinitiate his residence under that law. If he was removed to Turkey, it is likely that he would be removed to Iraq.

I hope that this information is useful to you and the United States authorities considering Mr. Saleh's case.

Sincerely,

/s/ H. Elizabeth Dallam

H. Elizabeth Dallam
Legal Counselor

[Letterhead of Catholic Charities of Orange County]

July 3, 2003

Headquarters Post Decision Unit
c/o Officer Robert Naranjo
2001 Seaside Avenue
San Pedro, CA 90731

SENT VIA FACSIMILE (310) 732-0770

RE: Zaki Mohammed SALEH A77-998-654

Dear Officer Naranjo,

On August 9, 2002 I submitted a request for parole for my client, Mr. Zaki Mohammed SALEH, A77-998-654. However, at that time I did not have identification for Mr. Saleh. On October 7, 2002, I resubmitted a request parole with a copy of an Iraqi identification card along with information regarding his sponsor Mr. Abbas Saleh and a letter of recommendation from an education instructor from Santa Ana Jail.

At this time, it appears that Mr. Saleh will not be admitted into Turkey and that Iraq currently has no system for the return of its refugees. Therefore, I respectfully request that headquarters reconsider granting Mr. Saleh parole until he can safely be returned to Iraq.

Mr. Saleh is a ethnic Turkmani, born in Iraq who fled to Turkey seeking refugee status. During Mr. Saleh's trial I sought the assistance from the United Nations High Commission for Refugees in determining whether Mr. Saleh was permanently resettled and could be readmitted to Turkey. As indicated in the enclosed letters from the UNHCR dated

October 9, 2002 and October 21, 2002, Mr. Saleh was not recognized as a refugee by the Commission and thus cannot be readmitted to Turkey as a refugee.

Additionally, on October 23, 2002, I sent a letter to the Consulate General of The Republic of Turkey to request assistance in determining Mr. Saleh's legal status in Turkey. I spoke with Mr. Serdar Demir, Secretary and received oral confirmation from the Consulate that Mr. Saleh would not be permitted entry into Turkey.

Mr. Saleh has been in detention since April 10, 2002.

I was hopeful that at his 90-day review Mr. Saleh would be released to the custody of his sponsor. However, in a decision dated March 14, 2003, Mr. Saleh was ordered detained due to his lack of cooperation to assist with his travel documents.

Mr. Saleh is willing to cooperate in every way possible, however Mr. Saleh does not speak English fluently and did not understand the contents of form I-229(a). Therefore, he did not provide the necessary information. If this information is still needed please contact me directly and my office can provide you with the necessary information.

In light of the fact that Mr. Saleh will not be admitted into Turkey and that Iraq currently has no system for the return of its refugees, I respectfully request that headquarters reconsider granting Mr. Saleh parole until he can safely be returned to Iraq.

Please contact me at (714) 347-9656 if you have any questions or if you need additional information. Thank you for your consideration of this matter.

Sincerely,

Lisa Ramirez, Esq.

/s/ Lisa D. Ramirez

Enclosures:
Letter from UNHCR dated October 9, 2002
Letter from UNHCR dated October 21, 2002
Letter to Consulate of Turkey

[Letterhead of U.S. Department of Justice]
[Immigration and Naturalization Service]

SALEH, ZAKI MOHAMMED A77 998 654
San Pedro Service Processing Center
2001 Seaside Avenue
San Pedro, Ca 90731

Notice of Failure to Comply Pursuant to 8 CFR 241.4(g)

This letter is to inform you that your custody status has been reviewed and it has been determined that you will not be released from the custody of the Immigration and Naturalization Service (Service) at this time. This decision has been made based on a review of your file and/or your personal interview and consideration of any information you submitted to the Service's reviewing officials.

On February 19, 2003, you were advised, via form I-229(a) and Instruction Sheet to Alien, of specific requirements to complete and were given 30 days to comply with your obligation to assist in obtaining a travel document. The burden to obtain a travel document for your removal does not solely rest with the Service. Pursuant to Section 241(a)(1)(C) of the Immigration and Nationality Act (INA), you are required to make timely and good faith efforts to obtain travel or other documents necessary for your removal from the United States. If you fail to make these efforts, Section 241(a)(1)(C) allows for the extension of the removal period. As you have refused to provide your biographical information contained in form I-217, Information for Travel Document, you have failed to comply with your obligation and are acting to prevent your removal from the United States. The removal period is therefore extended in your case.

As you are still within the removal period, you are to remain in Service custody until you demonstrate that you are making reasonable efforts to comply with the order of removal, and that you are cooperating with the Service's efforts to remove you.

You are also advised that continued willful failure or refusal on your part to make timely application in good faith for travel or other documents necessary for your departure, or any conspiracy or actions to prevent your removal or obstruct the issuance of a travel document, will subject you to criminal prosecution under 8 USC Section 1253(a).

/s/ Robert D. Hodgson Date: 3/14/03
Robert D. Hodgson, Assistant District Director
Detention & Removal Operations

Dear Ms. Ramirez, April 7, 2003

I received the enclosed notice from the deportation officer. I'm told I refused to cooperate giving some information about myself. I don't understand the letter or what they want. I need your help please. I want to cooperate so I can get out of custody. My English is not good and I don't understand what I need to do. Could you please help me? You're the only one who helps me and I appreciate all of your help. Thank you.

Sincerely,

s/ Zaki Seleh

Zaki Seleh

Mod – 3B

SAJ

3/25/03 – handed review [illegible writing]

** This letter was originally handwritten but was copied to typeface for purposes of this brief. Any illegible handwriting is designated as such.

Lisa, 10/28/03

I am writing to you regarding a couple of different issues concerning my case.

First of all, please be advised that I have been transferred from San Pedro to the Las Vegas City Jail. My new mailing address is as follows:

Zaki Mohammad Saleh #03-1114-F

City of Las Vegas Department of Detention and Enforcement

3300 East Stewart Avenue

Las Vegas, Nevada 89101

Secondly, I would like to know what is going on with my case. I have been in custody for almost 19 months now, and I still have no idea what's going on with my case. Please, I respectfully request that you write me back as soon as possible with an update on my case. I would specifically like to know when am I going to be released, or when am I going to be deported. I am getting tired of waiting. Please advise me as soon as possible as to what's going on, and when should I expect to be released or deported?

The third and final issue I would like you to help me with, if at all possible, is that I fear for my safety at this facility. There is a lot of arguing and fighting taking place here. I am an I.N.S. inmate (Non-criminal), and I am being housed in a block full of criminals. I do not feel safe here, and I need to be moved or transferred to a different place which houses only I.N.S. inmates. I almost had a fight yesterday, and therefore I am concerned for my safety. Please make some phone calls and help me with this matter as soon as possible. My life and my safety and well-being depends on it!

I would like to thank you in advance for your time and attention in these matters. I look forward to hearing from you soon.

Sincerely yours,

/s/ Zaki Mohammad Saleh

Zaki Mohammad Saleh

** This letter was originally handwritten but was copied to typeface for purposes of this brief. Any illegible handwriting is designated as such.

OMB No. 1115-0086

U.S. Department of Justice
Immigration and Naturalization Service

Application for Asylum and for Withholding of Removal

Start Here- Please Type or Print. **USE BLACK INK. SEE THE SEPARATE INSTRUCTION PAMPHLET FOR INFORMATION ABOUT ELIGIBILITY AND HOW TO COMPLETE AND FILE THIS APPLICATION.** (Note: There is NO filing fee for this application.)

Please check the box if you also want to apply for withholding of removal under the Convention Against Torture. ☐

PART A.I. INFORMATION ABOUT YOU

1. Alien Registration Number(s)(A #'s) *(if any)* **77998654**			2. Social Security No. *(if any)*
3. Complete Last Name **Saleh**	4. First Name **Zaki**		5. Middle Name **Mohammed**
6. What other names have you used *(Include maiden name and aliases.)* **Faisal Abdul Karim**			
7. Residence in the U.S. C/O **Santa Ana Jail**			Telephone Number **N/A**
Street Number and Name **60 Civic Center Drive**			Apt. No.
City **Santa Ana**	State **CA**		ZIP Code **92705**
8. Mailing Address in the U.S., if other than above **Santa Ana Jail**			Telephone Number **N/A**
Street Number and Name **P.O. Box 22003**			Apt. No.
City **Santa Ana**	State **CA**		ZIP Code **92705**
9. Sex ☒ Male ☐ Female	10. Marital Status: ☒ Single ☐ Married ☐ Divorced ☐ Widowed		
11. Date of Birth *(Mo/Day/Yr)* **05/01/1968**	12. City and Country of Birth **Karkouk Iraq**		
13. Present Nationality *(Citizenship)* **Iraqi**	14. Nationality at Birth **Iraqi**	15. Race, Ethnic or Tribal Group **Turkmani**	16. Religion **Islam-Sunni**

17. *Check the box, a through c that applies:*
a. ☐ I have never been in immigration court proceedings.
b. ☒ I am now in immigration court proceedings.
c. ☐ I am not now in immigration court proceedings, but I have been in the past.

18. *Complete 18 a through c.*
a. When did you last leave your country? *(Mo/Day/Yr)* **3-30-91**
b. What is your current I-94 Number, if any? _____

c. Please list each entry to the U.S. beginning with your most recent entry.
List date (Mo/Day/Yr), and your status for each entry. (Attach additional sheets as needed)

Date	**4-10-02**	Place	**L.A. International Airport**	Status		Date Status Expires	
Date		Place		Status			
Date		Place		Status			
Date		Place		Status			

19. What country issued your last passport or travel document	20. Passport # Travel Document #	21. Expiration Date *(Mo/Day/Yr)* / /
22. What is your native language? **Turkmani**	23. Are you fluent in English? ☐ Yes ☒ No	24. What other languages do you speak fluently? **Arabic**

FOR EOIR USE ONLY

FOR INS USE ONLY

Action:
Interview Date: _____
Decision:
__ Approval Date _____
__ Denial Date: _____
__ Referral Date: _____
Asylum Officer ID# _____

PART A.II. INFORMATION ABOUT YOUR SPOUSE AND CHILDREN

Your Spouse ☒ I am not married. (Skip to *Your Children, below*)

1. Alien Registration Number (A#) *(If Any)*	2. Passport/ID Card No. *(If any)*	3. Date of Birth *(Mo/Day/Yr)*	4. Social Security No. *(If any)*
5. Complete Last Name	6. First Name	7. Middle Name	8. Maiden Name
9. Date of Marriage *(Mo/Day/Yr)*	10. Place of Marriage	11. City and Country of Birth	
12. Nationality *(Citizenship)*	13. Race, Ethnic or Tribal Group	14. Sex ☐ Male ☐ Female	
15. Is this person in the U.S.? ☐ Yes *(Complete blocks 16 to 24)* ☐ No *(Specify location)*			
16. Place of last entry in U.S.?	17. Date of last entry in the U.S. *(Mo/Day/Yr)*	18. I-94 No. *(If any)*	19. Status when last admitted *(Visa type, if any)*
20. What is your spouse's current status?	21. What is the expiration date of his/her authorized stay, if any? *(Mo/Day/Yr)*	22. Is your spouse in immigration court proceedings? ☐ Yes ☐ No	23. If previously in the U.S., date of previous arrival *(Mo/Day/Yr)*
24. If in the U.S., is your spouse to be included in this application? *(Check the appropriate box.)* ☐ Yes *(Attach one (1) photograph of your spouse in the upper right hand corner of page 9 on the extra copy of the application submitted for this person.)* ☐ No			

Your Children. Please list **ALL** of your children, regardless of age, location, or marital status

☒ I do not have any children *(Skip to Part A.III., Information about Your Background.)*

☐ I do have children. Total number of children _____

(Use Supplement A Form I-589 or attach additional pages and documentation if you have more than four (4) children.)

1. Alien Registration Number (A#) *(if any)*	2. Passport/ID Card No. *(If any)*	3. Marital Status *(Married, Single, Divorced, Widowed)*	4. Social Security No. *(If any)*
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth *(Mo/Day/Yr)*
9. City and Country of Birth	10. Nationality *(Citizenship)*	11. Race, Ethnic or Tribal Group	12. Sex ☐ Male ☐ Female
13. Is this child in the U.S.? ☐ Yes *(Complete Blocks 14 to 21)* ☐ No *(Specify Location)*			
14. Place of last entry in the U.S.?	15. Date of last entry in the U.S.? *(Mo/Day/Yr)*	16. I-94 No. *(If any)*	17. Status when last admitted *(Visa type, if any)*
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? *(Mo/Day/Yr)*	20. Is your child in immigration court proceedings? ☐ Yes ☐ No	
21. If in the U.S., is this child to be included in this application? *(Check the appropriate box.)* ☐ Yes *(Attach one (1) photograph of your child in the upper right hand corner of page 9 on the extra copy of the application submitted for this person)* ☐ No			

PART A.II. INFORMATION ABOUT YOUR SPOUSE AND CHILDREN Continued

1. Alien Registration Number (A#) *(if any)*	2. Pass/ID Card No. *(if any)*	3. Marital Status *(Married Single, Divorced, Widowed)*	4. Social Security No. *(if any)*
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth *(Mo/Day/Year)*
9. City and Country of Birth	10. Nationality *(Citizenship)*	11. Race, Ethnic or Tribal Group	12. Sex ☐ Male ☐ Female

13. Is this child in the U.S.? ☐ Yes *(Complete blocks 14 to 21)* ☐ No *(Specify Location)*

14. Place of last entry in the U.S.?	15. Date of last entry in the U.S.? *(Mo/Day/Yr)*	16. I-94 No. *(If any)*	17. Status when last admitted
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, *(if any)* *(Mo/Day/Yr)*	20. Is your child in immigration court proceedings? ☐ Yes ☐ No	

21. If in the U.S., is this child to be included in this application? *(Check the appropriate box)*

☐ Yes *(Attach one (1) photograph of your child in the upper right hand corner of page 9 on the extra copy of the application submitted for this person.)*

☐ No

1. Alien Registration Number *(A#)(If any)*	2. Passport/ID Card No. *(If any)*	3. Marital Status *(Married, Single, Divorced, Widowed)*	4. Social Security No.
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth *(Mo/Day/Yr)*
9. City and Country of Birth	10. Nationality *(Citizenship)*	11. Race, Ethnic or Tribal Group	12. Sex ☐ Male ☐ Female

13. Is this Child in the U.S.? ☐ Yes *(Complete blocks 14 to 21)* ☐ No *(Specify Location)*

14. Place of last entry in the U.S.?	15. Date of last entry in the U.S.? *(Mo/Day/Yr)*	16. I-94 No. *(If any)*	17. Status when last admitted *(Visa type, if any)*
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any?	20. Is your child in immigration court proceedings? ☐ Yes ☐ No	

21. If in the U.S., is this child to be included in this application? *(Check the appropriate box)*

☐ Yes *(Attach one (1) photograph of your child in the upper right hand corner of page 9 on the extra copy of the application submitted for this person.)*

☐ No

1. Alien Registration Number (A#) *(If any)*	2. Passport/ID Card No. *(If any)*	3. Marital Status *(Married Single, Divorced, Widowed)*	4. Social Security No. *(If any)*
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth *(Mo/Day/Yr)*
9. City and Country of Birth	10 Nationality	11. Race, Ethnic or Tribal Group	12. Sex ☐ Male ☐ Female

13. Is the child in the U.S.? ☐ Yes (Complete blocks 14 to 21) ☐ No (Specify Location)

14. Place of last entry in the U.S.?	15. Date of last entry in the U.S.? *(Mo/Day/Yr)*	16. I-94 No. *(If any)*	17. Status when last admitted *(Visa type, if any)*
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? *(Mo/Day/Yr)*	20. Is your child in immigration court proceedings ☐ Yes ☐ No	

21. If in the U.S., is this child to be included in this application? *(Check the appropriate box)*

☐ Yes *(Attach one (1) photograph of your child in the upper right hand corner of page 9 on the extra copy of the application submitted for this person.)*

☐ No

PART A.III. INFORMATION ABOUT YOUR BACKGROUND

1. Please list your last address where you lived before coming to the U.S. If this is not the country where your fear persecution, also list the last address in the country where you fear persecution. *(List Address, City/Town, Department, Province, or State, and Country.) (Use Supplement B Form I-589 or additional sheets of paper if necessary.)*

Number and Street *(Provide if available)*	City/Town	Department, Province or State	Country	Dates From *(Mo/Yr)*	Dates To *(Mo/Yr)*
Kurk Bose Mols AP 2	Istanbul		Turkey	1991	4/2002
Tarayan Place Bldg 21/22	Karkouk		Iraq	1968	1991

2. Provide the following information about our residences during the last five years. List your present address first. *(Use Supplement Form B or additional sheets of paper if necessary.)*

Number and Street	City/Town	Department, Province or State	Country	Dates From *(Mo/Yr)*	Dates To *(Mo/Yr)*
60 Civic Center Drive	Santa Ana	CA	Turkey	1991	

3. Provide the following information about your education, beginning with the most recent. *(Use Supplement B Form I-589 or additional sheets of paper if necessary.)*

Name of School	Type of School	Location *(Address)*	Attended From *(Mo/Yr)*	Attended To *(Mo/Yr)*
Saref Rata	Secondary school	Karkouk, Iraq	—	1980
Adalt	Elementary school	Karkouk, Iraq	1974	—

4. Provide the following information about your employment during the last five years. List your present employment first. *(Use Supplement Form B or additional sheets of paper if necessary.)*

Name and Address of Employer	Your Occupation	Dates From *(Mo/Yr)*	Dates To *(Mo/Yr)*
Istanbul, Turkey	Self employed vendor	04 1994	04 2002
Ene Basna Istanbul, Turkey	Tailor	1991	04 1994

5. Provide the following information about your parents and siblings (brother and sisters). Check box if the person is deceased. *(Use Supplement B Form I-589 or additional sheets of paper if necessary.)*

Name	City/Town and Country of Birth	Current Location
Mother Bahie H Sherif	Karkouk, Iraq	☐ Deceased Arafa
Father Mohammed Saleh	Karkouk, Iraq	☒ Deceased Mosqla
Siblings		☐ Deceased
		☐ Deceased

PART B. INFORMATION ABOUT YOUR APPLICATION

(Use Supplement B Form I-589 or attach additional sheets of paper as needed to complete your responses to the questions contained in PART B.)

When answering the following questions about your asylum or other protection claim (withholding of removal under 241(b)(3) of the Act or withholding of removal under the Convention Against Torture) you should provide a detailed and specific account of the basis of your claim to asylum or other protection. To the best of your ability, provide specific dates, places, and descriptions about each event or action described. You should attach documents evidencing the general conditions in the country from which you are seeking asylum or other protection and the specific facts on which you are relying to support your claim. If this documentation is unavailable or you are not providing this documentation with your application, please explain why in your responses to the following questions. Refer to Instructions, Part 1: Filing Instructions, Section II, "Basis of Eligibility," Parts A-D, Section V, "Completing the Form," Part B, and Section VII, "Additional Documents the You Should Submit" or more information on completing this section of the form.

1. Why are you applying for asylum or withholding of removal under section 241(b)(3) of the Act, or for withholding of removal under the Convention Against Torture? Check the appropriate box(es) below and then provide detailed answers to questions A and B below.

I am seeking asylum or withholding of removal based on

- ☒ Race
- ☐ Religion
- ☐ Nationality
- ☒ Political opinion
- ☒ Membership in a particular social group
- ☒ Torture Convention

A. Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone?

☐ No ☒ Yes If your answer is "Yes," explain in detail:

1) What happened;
2) When the harm or mistreatment or threats occurred;
3) Who caused the harm or mistreatment or threats; and
4) Why you believe the harm or mistreatment or threats occurred.

My father Mohammed Saleh was executed by the Iraqi government. I served as a private in Saddam's army. I was sixteen when I started in 1983. I was assigned to a regiment in Hafriel-baten, Southern Iraq. During "Operation Desert Storm" I shot myself in the shoulder. I was afraid of advancing against U.S. forces. My superior officers noticed the powder burn on my arm and knew it had been a self inflicted wound. I was taken to the military hospital in Baghdad. I was a patient for a week at the Rashid Military Hospital. I was then taken before a military court and interrogated about my self inflicted wound. I denied that I had injured myself and was subjected to torture. Electric shock was used against me and I was still able to deny my wound. Then the guards had forcible sex with me. They sodomized me until I confessed to having inflicted the wound myself. I still suffer from occasional bleeding as a result of being sodomized by the Iraqi Secret Service Gurads during my captivity in 1991. (see attached statement)

B. Do you fear harm or mistreatment if you return to your home country?

☐ No ☒ Yes If your answer is "Yes," explain in detail:

1) What harm or mistreatment you fear;
2) Who you believe would harm or mistreat you; and
3) Why you believe you would be harmed or mistreated.

I have been subjected to torture before. If I am returned to Iraq, I will most likely be tortured and sodomized once again by the Iraqi government. Iraqi Secret Service guards would take me into custody and question me about my liberation by the Kurds in 1991. I would also face having my death sentence be carried out. If I was returned to Turkey, the Turkish government would turn me over to the Iraqi government.

(see attached statement)

PART B. INFORMATION ABOUT YOUR APPLICATION Continued

2. Have you or your family members ever been charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in any country other than the United States?

☐ No ☒ Yes If "Yes," explain the circumstances and reasons for action.

In 1974 my father was publicly executed (hung) by the Iraqi governemtn because they thought he was affiliated with the Turkmani party. [redacted]. I was also imprisoned by the Iraqi government and sentenced to death by firing squad due to a self inflicted wound during "Operation Desert Storm".

(See attached statement)

3.A. Have you or your family members ever belonged to or been associated with any organizations or groups in your home country, such as, but not limited to, a political party, student group, labor union, religious organization, military or paramilitary group, civil patrol, guerrilla organization, ethnic group, human rights group, or the press or media?

☐ No ☒ Yes If "Yes," describe for each person the level of participation, any leadership or other positions held, and the length of time you or your family members were involved in each organization or activity.

My family is Turkmani. We were not supporters of the Baath Party, but forced to join Otherwise, we would have been jailed or executed.

My father was executed for having different political beliefs from the Iraqi government.

B. Do you or your family members continue to participate in any way in these organizations or groups?

☒ No ☐ Yes If "Yes," describe for each person, you or your family members' current level of participation, any leadership or other positions currently held, and the length of time you or your members have been involved in each organization or group.

4. Are you afraid of being subjected to torture in your home country or any other country to which you may be returned?

☐ No ☒ Yes If "Yes," explain why you are afraid and describe the nature of the torture you fear, by whom, and why it would be inflicted.

I have been persecuted by the Iraqi government before. When I was a prisoner in Iraq, I was subjected to torture, including electric shock and sodomy. If I am returned to Iraq, my death sentence would be carried out and I would face the firing squad. If I am returned to Turkey, I would be arrested by the Turkish Police and returned to Iraq.

(See attached statement)

PART C. ADDITIONAL INFORMATION ABOUT YOUR APPLICATION

(Use Supplement B Form I-589 or attach additional sheets of paper as needed to complete your responses to the questions contained in Part C.)

1. Have you, your spouse, your child(ren), your parents, or your siblings ever applied to the United States Government for refugee status, asylum, or withholding of removal? ☒ No ☐ Yes

If "Yes" explain the decision and what happened to any status you, your spouse, your child(ren), your parents, or your siblings received as a result of that decision. Please indicate whether or not you were included in a parent or spouse's application. If so, please include your parent or spouse's A-number in your response. If you have been denied asylum by an Immigration Judge or the Board of Immigration Appeals, please describe any change(s) in conditions in your country or your own personal circumstances since the date of the denial that may affect your eligibility for asylum.

2. A. After leaving the country from which you are claiming asylum, did you or your spouse or child(ren), who are now in the United States, travel through or reside in any other country before entering the United States? ☐ No ☒ Yes

B. Have you, your spouse, your child(ren), or other family members such as your parents or siblings ever applied for or received any lawful status in any country other than the one from which you are now claiming asylum? ☐ No ☒ Yes

If "Yes" to either or both questions (2A and/or 2B), provide for each person the following: the name of each country and the length of stay; the person's status while there; the reasons for leaving; whether the person is entitled to return for lawful residence purposes; and whether the person applied for refugee status or for asylum while there, and, if not, why he or she did not do so.

When I left Iraq in 1991, I went to Istanbul, Turkey. I reported to the security agency of Turkey immediately and was granted lawful permanent resident alien status. My mother followed me to Turkey in 1995. Likewise, my mother was also granted legal permanent resident status upon entering Turkey. However, there is a great deal of tension between Iraq and Turkey. It is not a stable relationship. Iraqis are treated poorly by the Turkish police, and are harassed. Money is taken from them, and I no longer felt secure. Every two years I had to renew my legal status and had difficulty doing so.

3. Have you, your spouse, or child(ren) ever ordered, incited, assisted, or otherwise participated in causing harm or suffering to any person because of his or her race, religion, nationality, membership in a particular social group or belief in a particular political opinion?

☒ No ☐ Yes If "Yes," describe in detail each such incident and your own or your spouse's or child(ren)'s involvement.

PART C. ADDITIONAL INFORMATION ABOUT YOUR APPLICATION Continued

4. After you left the country where you were harmed or feared harm, did you return to that country?

☒ No ☐ Yes If "Yes," describe in detail the circumstances of your visit (for example, the date(s) of the trip(s), the purpose(s) of the trip(s), and the length of time you remained in that country for the visit(s)).

5. Are you filing the application more than one year after your last arrival in the United States?

☒ No ☐ Yes If "Yes," explain why you did not file within the first year after you arrived. You should be prepared to explain at your interview or hearing why you did not file your asylum application within the first year after you arrived. For guidance in answering this question, see Instructions, Part 1: Filing Instructions, Section V. "Completing the Form," Part C.

6. Have you or any member of your family included in the application ever committed any crime and/or been arrested, charged, convicted and sentenced for any crimes in the United States?

☒ No ☐ Yes If "Yes," for each instance, specify in your response what occurred and the circumstances; dates; length of sentence received; location; the duration of the detention or imprisonment; the reason(s) for the detention or conviction; any formal charges that were lodged against you or your relatives included in your application; the reason(s) for release. Attach documents referring to these incidents, if they are available, or an explanation of why documents are not available.

PART D. YOUR SIGNATURE

After reading the information regarding penalties in the instructions, complete and sign below. If someone helped you prepare this application, he or she must comp... Part E.

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it are all true and correct. Title 18, United States Code, Section 1546, provides in part, "Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or knowingly presents any such application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement or which fails to contain any reasonable basis in the law or fact - shall be fined in accordance with this title or imprisoned not more than five years, or both." I authorize the release of any information from my record which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Staple your photograph here or the photograph of the family member to be included on the extra copy of the application submitted for that person.

WARNING: Applicants who are in the United States illegally are subject to removal if their asylum or withholding claims are not granted by an Asylum Officer or an Immigration Judge. Any information provided in completing this application may be used as a basis for the institution of, or as evidence in, removal proceedings even if the application is later withdrawn. Applicants determined to have knowingly made a frivolous application for asylum will be permanently ineligible for any benefits under the Immigration and Nationality Act. See 208(d)(6) of the Act and 8 CFR 208.20.

Print Complete Name	Write your name in your native alphabet
Zaki Mohammed Saleh	

Did your spouse, parent, or child(ren) assist you in completing this application? ☒ No ☐ Yes *(If "Yes," list the name and relationship.)*

(Name) _____ *(Relationship)* _____ *(Name)* _____ *(Relationship)* _____

Did someone other than your spouse, parent, or child(ren) prepare this application? ☐ No ☒ Yes *(If "Yes," complete Part E)*

Asylum applicants may be represented by counsel. Have you been provided with a list of persons who may be available to assist you, at little or no cost, with your asylum claim? ☒ No ☐ Yes

Signature of Applicant *(The person in Part A.1.)*

[_____] 6/18/02

Sign your name so it all appears within the brackets — Date *(Mo/Day/Yr)*

PART E. DELCLARATION OF PERSON PREPARING FORM IF OTHER THAN APPLICANT, SPOUSE, PARENT OR CHILD

I declare that I have prepared this application at the request of the person named in Part D, that the responses provided are based on all information of which I have knowledge, or which was provided to me by the applicant and that the completed application was read to the applicant in his or her native language or a language he or she understands for verification before he or she signed the application in my presence. I am aware that the knowing placement of false information on the Form I-589 may also subject me to civil penalties under 8 U.S.C. 1324(c)

Signature of Preparer	Print Complete Name: Lisa Ramirez		
Daytime Telephone Number: 714 957-4647	Address of Preparer Street Number and Name: 1506 Brookhollow Drive Suite #112		
Apt. No.	City: Santa Ana	State: Cal	ZIP Code: 92705

PART F. TO BE COMPLETED AT INTERVIEW OR HEARING

You will be asked to complete this Part when you appear before an Asylum Officer of the Immigration and Naturalization Service (INS), or an Immigration Judge of the Executive Office for Immigration Review (EOIR) for examination.

I swear (affirm) that I know the contents of this application that I am signing, including the attached documents and supplements, that they are all true to the best of my knowledge taking into account correction(s) numbered _____ to _____ that were made by me or at my request

Signed and sworn to before me by the above named applicant on:

_____ _____

Signature of Applicant — Date *(Mo/Day/Yr)*

_____ _____

Write Your Name in Your Native Alphabet — Signature of Asylum Officer or Immigration Judge

43 (193D)